

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

SCOTT SMITH,

Plaintiff,

Case No. 1:17-cv-759

v.

SHANE JACKSON, et al.,

HON. JANET T. NEFF

Defendants.

OPINION AND ORDER

This is a prisoner civil rights action filed pursuant to 42 U.S.C. § 1983. The matter is presently before the Court on Plaintiff's objections to the March 6, 2020 Report and Recommendation, which recommends that this Court grant Defendants' motion for summary judgment and dismiss Plaintiff's Amended Complaint with prejudice. Defendants filed a response to Plaintiff's objections. In accordance with 28 U.S.C. § 636(b)(1) and FED. R. CIV. P. 72(b)(3), the Court has performed de novo consideration of those portions of the Report and Recommendation to which objections have been made. For the following reasons, the Court denies the objections and issues this Opinion and Order.

As a threshold matter, Plaintiff first argues that the Magistrate Judge erred in determining that Plaintiff did not offer evidence that the legal papers were mailed to him (Obj., ECF No. 45 at PageID.235-236). Plaintiff's objection is misplaced. The Magistrate Judge's March 6, 2020 Report and Recommendation does not claim that there is no evidence that Plaintiff's legal papers were mailed to him.

Next, Plaintiff argues that the Magistrate Judge erred in ruling that Plaintiff did not suffer an actual injury by being denied his legal mail (Obj., ECF No. 45 at PageID.236-238). Plaintiff's argument lacks merit. As the Magistrate Judge explained, Plaintiff had one year from March 30, 2014 to file a habeas corpus petition and the "alleged destruction of Plaintiff's legal papers in July 2016 could not have caused any actual injury to Plaintiff's already time-barred habeas petition" (R&R, ECF No. 44 at PageID.230).

Next, Plaintiff argues that the Magistrate Judge improperly determined that Plaintiff failed to offer proof of Defendants' personal involvement in the due process violation (Obj., ECF No. 45 at PageID.238). The Magistrate Judge provided several reasons why Plaintiff's Amended Complaint could not be treated as an affidavit, and Plaintiff's mere disagreement with the conclusion does not demonstrate any factual or legal error in the analysis. To the extent Plaintiff requests that he be allowed to conduct discovery (*id.* at PageID.240), Plaintiff's request is properly denied at this late date, where the parties have already briefed Defendants' motion for summary judgment and the Magistrate Judge has issued her recommendation. Further, as Defendants point out (Resp., ECF No. 47 at PageID.267), Plaintiff did not avail himself of any discovery procedures during the discovery period and has not made a particularized showing of need.

Next, Plaintiff argues that he "can sue the Defendants as individuals" (Obj., ECF No. 45 at PageID.240). Plaintiff's argument is misplaced. The Magistrate Judge expressly stated that the Eleventh Amendment bars any claims against Defendants in their official capacities, but not in their personal capacities (R&R, ECF No. 44 at PageID.232).

Last, Plaintiff argues that the Magistrate Judge erred by finding that the Defendants are entitled to qualified immunity (Obj., ECF No. 45 at PageID.240). Plaintiff's argument lacks merit. The Magistrate Judge properly determined that where Plaintiff failed to show that Defendants

committed a constitutional violation, Defendants were entitled to qualified immunity (R&R, ECF No. 44 at PageID.233, citing *Pearson v. Callahan*, 555 U.S. 223, 232 (2009)).

Accordingly, this Court adopts the Magistrate Judge's Report and Recommendation as the Opinion of this Court. Further, because this Opinion and Order resolves the last pending claim in this case, a Judgment will be entered. *See FED. R. Civ. P. 58.* Because this action was filed *in forma pauperis*, and consistent with the Magistrate Judge's recommendation, this Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that an appeal of this decision would not be taken in good faith. *See McGore v. Wrigglesworth*, 114 F.3d 601, 610 (6th Cir. 1997), overruled on other grounds by *Jones v. Bock*, 549 U.S. 199, 206, 211-12 (2007). Therefore:

IT IS HEREBY ORDERED that the Objections (ECF No. 45) are DENIED and the Report and Recommendation of the Magistrate Judge (ECF No. 44) is APPROVED and ADOPTED as the Opinion of the Court.

IT IS FURTHER ORDERED that Defendants' Motion for Summary Judgment (ECF No. 29) is GRANTED.

IT IS FURTHER ORDERED that this Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that an appeal of this decision would not be taken in good faith.

Dated: April 22, 2020

/s/ Janet T. Neff
JANET T. NEFF
United States District Judge